Celebrating Canada's sesquicentennial: Lessons from and for the world

Peter Oliver, Patrick Macklem and Nathalie Des Rosiers, eds. *The Oxford Handbook of the Canadian Constitution*. Oxford University Press, 2017 (hardback). Pp. 1,168. £97.00. ISBN: 9780190664817

Richard Albert & David R. Cameron (eds.). *Canada in the World: Comparative Perspectives on the Canadian Constitution*. Cambridge University Press, 2017 (hardback). Pp. 482. £110.00. ISBN: 9781108419734.

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1. Introduction

"I would not look to the US constitution, if I were drafting a constitution in the year 2012. I might look at the constitution of South Africa. . . . Much more recent than the US constitution – Canada has a Charter of Rights and Freedoms. It dates from 1982."[1] Speaking on Egyptian TV in 2012, US Supreme Court Justice Ruth Bader Ginsburg made this statement recognizing the increasing influence of constitutional systems beyond the United States, including Canada's. This remark attracted criticism at home, especially from conservative commentators who were quick to misinterpret it, but it was buttressed by academic scholarship and empirical findings. For example, a study published that same year lent support to the idea that Canada has been a "constitutional trendsetter among common law countries."[2] As the title of this review essay suggests, the interaction between Canada and other constitutional systems has been bidirectional. Indeed, if the Canadian constitutional paradigm has been influential around the world, this influence may also stem from comparative law being embedded into the country's DNA.[3]

[1] The Middle East Media Research Institute TV Monitor Project, 'U.S. Supreme Court Justice Ruth Bader Ginsburg to Egyptians: Look to the Constitutions of South Africa or Canada, Not to the U.S. Constitution, As a Model' (February 7, 2012), https://www.memri.org/reports/us-supreme-court-justice-ruth-bader-ginsburg-egyptians-look-constitutions-south-africa-or (last visited November 15, 2018).

[2] David S. Law & Mila Versteeg, *The Declining Influence of the United States Constitution*, 87 N.Y.U. L. REV. 762, 809-23 (2012) (discussing whether Canada is a "constitutional superpower").

[3] Anne-Marie Slaughter has made a similar point on the two-way direction of influence focusing specifically on constitutional courts, see ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER 74 (2004) (noting that the "disproportionate influence" of courts such as the Canadian Supreme Court may result from their ability to "capture and crystallize the work of their fellow constitutional judges around the world").

Therefore, the publication of two volumes on Canadian constitutional law, coinciding fittingly with the celebration of Canada's sesquicentennial, is very timely. *The Oxford Handbook of the Canadian Constitution* (*Oxford Handbook*) and C*anada in the World: Comparative Perspectives on the Canadian Constitution* (*Canada in the World*) provide excellent resources to consider the role of different legal traditions in the development of the Canadian constitutional system and, conversely, Canada's increasing influence around the world.

Running at 1,168 pages, the *Oxford Handbook* provides a comprehensive and authoritative account of key features of the Canadian constitution. Following the tradition of the *Oxford Handbook* series, leading authors have contributed concise chapters presenting the state of the field in their areas of expertise. These chapters are structured around six main themes: constitutional history; institutions and constitutional change; Indigenous Peoples and the Canadian constitution; federalism; rights and freedoms; and constitutional theory. This excellent volume will serve as a useful reference point for any scholar seeking a general albeit nuanced scholarly overview of the subject. The handbook strikes an effective balance between breadth (fifty chapters) and depth of analysis, which is supported by the successful thematic structure and the expertise of its contributors. There is a commendable emphasis on constitutional structure, with six chapters covering the three branches of government and eleven chapters addressing both general federalism theory and specific subject matters from a federalism perspective, ranging from health care to marriage, and from commercial law to environmental law and minority language rights. With respect to structural questions, some additional emphasis on administrative law in connection with the background constitutional structure would have been helpful in a volume of this scope and ambition, although Lorne Sossin's contribution on "Courts, Administrative Agencies, and the Constitution" (*Oxford Handbook*, Ch. 11) introduces this area very effectively and there are other chapters that touch on administrative law questions, e.g., Dwight Newman's chapter on the section 35 duty to consult Indigenous Peoples (*Oxford Handbook*, Ch. 16).[4]

Overall, consistent with the aims of this volume, the focus in the *Oxford Handbook* is on domestic constitutional law, with particular emphasis on three important themes: the formula for constitutional amendment in Part V of the *Constitution Act*, 1982; the *Charter of*

[4] Admittedly, there are other recent works that cover this area of public law; for instance, readers interested in this particular field can consult books such as ADMINISTRATIVE LAW IN CONTEXT (Colleen M. Flood & Lorne Sossin eds., 3rd ed. 2018).

Rights and Freedoms; and constitutional protections for Indigenous Peoples (*Oxford Handbook*, at 4). However, there are also references to foreign jurisdictions throughout several chapters and comparative engagement is the focal point of specific contributions. For instance, Mark Walters's fascinating chapter explores the role of the British legal tradition in Canadian constitutional law, critiques A.V. Dicey's view that the Canadian constitution was closer to the US rather than the UK constitution, and concludes that one of the distinctively Canadian contributions to constitutionalism is viewing "parliamentary sovereignty and the rule of law as complementary not opposing ideals" (*Oxford Handbook*, at 122). This contribution is in interesting conversation with John Lovell's chapter on parliamentary sovereignty (*Oxford Handbook*, Ch. 9) and Timothy Endicott's and Peter Oliver's chapter on the role of theory in Canadian constitutional law (*Oxford Handbook*, Ch. 44). Furthermore, the last chapter in the *Oxford Handbook* (Sujit Choudry's "The Canadian constitution and the world") explores the global influence of the Canadian constitutional model, with a particular emphasis on "dialogue theory" and the constitutional accommodation of minority nationalism.

This concluding chapter is a good segue to the second book, *Canada in the World*, in which a comparative focus is more salient. The scope of coverage in this book is less extensive, which is understandable in a volume half the length of the *Oxford Handbook* (482 pages). Instead, the emphasis is on three main areas: the accommodation of diversity through the lens of federalism and constitutional pluralism (Part I); the role of the Supreme Court of Canada (Part II); and the growing global influence of Canadian constitutionalism (Part III). Leading comparative public law scholars have contributed chapters, including on freedom of expression (Adrienne Stone), equality (Catharine MacKinnon), dialogue theory (Alison Young), and proportionality and "rights inflation" (Mark Tushnet). There is a heavier emphasis on rights rather than structural features of the Canadian constitution. This focus is, as Ran Hirschl notes in this very volume, reflective of the less extensive Canadian engagement with foreign constitutional experience regarding structural questions (*Canada in the World*, at 320-21). However, certain structural questions are addressed in the volume, for example, in Stephen Tierney's chapter on federalism and Jamie Cameron's chapter on constitutional amendment procedures (*Canada in the World*, Chs. 2 and 5).

Therefore, the two books complement each other and, in tandem, provide a rich account both of external influences on the development of the Canadian constitutional model and the influence that this model has had overseas. A single review essay cannot do justice to the fifty chapters of the *Oxford Handbook* and the nineteen chapters of *Canada in the World*. Instead,

my aim is to identify certain key themes that emerge from the two books, which in turn highlight distinctive features of the Canadian system on which comparative scholars can draw.

2. The *Canadian Charter of Rights and Freedoms* as a "national icon"

It will probably come as little surprise that the exploration of key themes in the two books begins with the *Charter of Rights and Freedoms* as the national expression of Canada's fundamental values (e.g., *Oxford Handbook*, at 621, 1017). Multiple contributions cover general issues about the *Charter* – e.g., Joanna Harrington's chapter on interpreting the *Charter*, Carissima Mathen's chapter on access to courts in constitutional cases, and Kent Roach's chapter on *Charter* remedies (*Oxford Handbook*, Chs. 29, 30, 32) – while others cover specific rights. Interestingly, and appropriately, several authors situate the discussion of rights within a broader institutional framework. For instance, Yasmin Dawood demonstrates how the Canadian Supreme Court has interpreted the right to vote under section 3 of the *Charter* as encompassing "a bundle of democratic rights, thus enabling it to regulate a wider array of democratic institutions and processes" (*Oxford Handbook*, at 717). Benjamin Berger analyzes freedom of religion within the broader context of the structure of Canadian constitutionalism, noting for example "the instability of the public/private divide as a means of analysing constitutional problems" (*Oxford Handbook*, at 758). In her chapter on equality and anti-discrimination, Sonia Lawrence argues that the judiciary's "preoccupation" with avoiding "institutional competence conflicts with legislatures" has resulted in the doctrinal choice to resolve many questions inside section 15 through a formalist and narrow conception of equality (*Oxford Handbook*, at 816).

In celebrating the *Charter*, it is also important to keep in mind the limits in the scope of protection that the interpretation of the *Charter* has afforded. A series of contributions shed light on such limits. For example, Margot Young explains how liberal liberalism has curtailed the "transformative deployment" of the rights to life, liberty, and security of the person under section 7 of the *Charter* to advance social justice ambitions, e.g., by obligating the state to provide health care and adequate social assistance (*Oxford Handbook*, Ch. 37). Martha Jackman and Bruce Porter continue this important conversation by tracing two opposing paradigms of constitutional rights in socio-economic rights litigation: the first paradigm refuses to interpret the *Charter* as imposing positive obligations on governments while the second paradigm interprets broadly framed *Charter* provisions to "include, rather than exclude, human

rights violations experienced by disadvantaged individuals and groups" (*Oxford Handbook*, Ch. 40). In a similar vein, Catharine MacKinnon suggests that the judicial approach to section 15 equality claims has sidelined "material hierarchy," thus limiting the scope of the equality guarantee (*Canada in the World*, Ch. 10). Allan Hutchinson is particularly critical of this line of cases as reflecting a view "that individual entitlements are much more important than social responsibilities, that negative liberty is to be promoted at the expense of positive liberty" (*Oxford Handbook*, at 1001-02).

3. The role of the Supreme Court of Canada in the context of institutional multiplicity

Throughout the discussion of the *Charter*, the Supreme Court of Canada occupies a central place. Indeed, as already noted, one of the three main sections of *Canada in the World* is dedicated to this institution and the *Oxford Handbook* covers both the jurisprudence of the Court across a variety of areas as well as the constitutional status of the Court and judicial appointments (e.g., Adam Dodek's and Rosemary Cairns Way's contribution, *Oxford Handbook*, Ch. 10). Comparative public law scholars will be particularly interested in the Court's progressive approach to interpreting the constitution, captured by the "living tree" metaphor. The metaphor originates in the famous *Edwards* case, in which the Judicial Committee of the Privy Council, at the time the final court of appeal for Canada, described the constitution as a "living tree capable of growth and expansion within its natural limits"[5] and was endorsed by the Supreme Court in post-*Charter* cases. It is also of interest that two contributions in the two volumes aim to demonstrate that the gap between the "living tree" approach and moderate versions of originalism is not significant.[6]

Central as the position of the Supreme Court of Canada may be, it is also important to situate the Court within a broader framework of institutional multiplicity.[7] Indeed, one of Canada's distinctive, and well-known, contributions to constitutionalism and influential exports has been "dialogue theory." This is the idea that the judiciary and the legislature are in

[5] *Edwards v Attorney General of Canada* [1930] AC 124, 136.

[6] W.J. Waluchow's refers to "constitutional construction" as a form of moderate originalism (*Oxford Handbook*, Ch. 42) and Jeffrey Goldsworthy and Hon. Grant Huscroft to "public meaning originalism" using case studies from Australia and Canada (*Canada in the World*, Ch. 8).

[7] For a more detailed discussion of the idea of "institutional multiplicity" in the context of constitutional interpretation and evolution, see Athanasios Psygkas, *The Hydraulics of Constitutional Claims: Multiplicity of Actors in Constitutional Interpretation*, 69 U. TORONTO L.J. 211 (2019).

a dialogic relationship, whereby the judiciary may not have the final word and the legislature may respond to judicial decisions by amending its enactments (Peter Hogg and Ravi Amarnath, *Oxford Handbook*, at 1053-54). Peter Hogg and Ravi Amarnath describe the four features of the *Charter* that facilitate *Charter* dialogue. First, section 1 of the *Charter*, the "limitations clause," invites this dialogue when courts, under the "minimal impairment" prong of the analysis, suggest less restrictive measures that the legislature can adopt.[8] Second, qualified *Charter* rights facilitate dialogue under a similar mechanism to the general limitations clause. Third, the equality guarantee (section 15 of the *Charter*) can promote dialogue when a group is unconstitutionally excluded from a legislative scheme and the government responds to a judicial ruling by extending the scheme to groups that had been previously impermissibly excluded. Fourth, the notwithstanding clause (section 33 of the *Charter*) allows Parliament and provincial legislatures to re-enact a law on a temporary but renewable basis, notwithstanding that this law is found to be in violation of a right in section 2 or sections 7 to 15 of the *Charter*. Both the political cost and the temporal limits of invoking section 33 point to the limitations of the notwithstanding clause. However, as Janet Hiebert (*Oxford Handbook*, Ch. 33) and Alison Young (*Canada in the World*, Ch. 14) explain, this clause has been influential in other systems such as Australia, New Zealand, and the United Kingdom, namely systems representing what Stephen Gardbaum has described as the "new Commonwealth model of constitutionalism."[9]

A detailed examination of the merits and demerits of this model is beyond the scope of this review. The main point to highlight here is that the emphasis on the Canadian Supreme Court should be combined with examining the broader institutional environment in which Canada's top court operates and how it interacts with other institutions. Kent Roach's contribution (*Canada in the World*, Ch. 12) helpfully turns the spotlight on such interactions by examining another "Canadian constitutional export" – the suspended declaration of invalidity, whereby the effect of a judicial ruling of unconstitutionality is suspended to give the legislature time to enact *Charter*-compliant legislation. Roach argues that this remedy contemplates "a partnership or dialogue between courts and legislatures" and provides space to the latter "to select among a variety of constitutional options and to devise complex and

[8] Adrienne Stone also makes this point in the case of freedom of expression noting that "a constitutional order like Canada's, committed to facilitating inter-institutional interaction, may well be more receptive than others to proportionality-based review . . . [W]here a law fails a proportionality test on the means-ends element of the proportionality analysis, it is open to the parliament to respond with a law that more effectively pursues its objective or does so in a manner more narrowly tailored towards that objective" (*Canada in the World*, at 258-59). Charles-Maxime Panaccio's contribution analyses section 1 of the *Charter* (*Oxford Handbook*, Ch. 31).

[9] STEPHEN GARDBAUM, THE NEW COMMONWEALTH MODEL OF CONSTITUTIONALISM: THEORY AND PRACTICE (2013)

multi-faceted remedies that the courts could not devise" (*Canada in the World*, at 290). He concludes that "we cannot simply rely on independent and even heroic judges to deliver effective remedies. Remedies are deeply dialogic in requiring good faith and prompt cooperation from the executive, the legislature and the larger society to be truly effective" (*Canada in the World*, at 291).

Finally, to this multiplicity of actors outside the courts we should add administrative agencies (*Oxford Handbook*, at 238-41). In 1996, Canadian Supreme Court Justice Beverley McLachlin (as she then was) captured this eloquently in a dissenting judgment which has since been endorsed by the Court:

> The *Charter* is not some holy grail which only judicial initiates of the superior courts may touch. The *Charter* belongs to the people. All law and law-makers that touch the people must conform to it. Tribunals and commissions charged with deciding legal issues are no exception. Many more citizens have their rights determined by these tribunals than by the courts. If the *Charter* is to be meaningful to ordinary people, then it must find its expression in the decisions of these tribunals.[10]

4. Constitutional pluralism

The role of constitutional actors beyond the Supreme Court is only one manifestation of constitutional pluralism in Canada. Indeed, as Richard Albert notes perceptively in the introduction to *Canada in the World*, the need and will to accommodate diversity is rooted deeply in the history of the country (*Canada in the World*, at 8). He adds that Canada has been engaged in a long process of trying to reconcile "not only its external British and American influences but also a more complex interaction of internal forces that simultaneously pull and push Canada toward the particularistic political commitments of Confederation and the universalist aspirations of the *Charter*" (*Canada in the World*, at 3). In a similar vein, David Schneiderman's chapter on constitutional culture demonstrates that, despite attempts at imposing a unitary vision, the Canadian constitutional project has been pluralistic (*Oxford Handbook*, at 914). Ayelet Shachar further directs our attention to the "globally unique" explicit commitment to the value of multiculturalism in the *Charter* (*Canada in the World*, at 130).

[10] *Cooper v Canada (Human Rights Commission)*, [1996] 3 S.C.R. 854, at [70]. The Supreme Court endorsed this view in *Nova Scotia (Workers' Compensation Board) v Martin*, [2003] 2 S.C.R. 504 and *R v Conway*, [2010] 1 S.C.R. 765.

Both volumes engage critically with Canada's commitment to pluralism, primarily around two axes: federalism, and the relationship between Indigenous Peoples and the Canadian state. Both volumes also acknowledge that Canadian government policy has not always aimed at accommodation but rather assimilation.[11] When it comes to federalism, Stephen Tierney elucidates how Canada's diversity, notably Quebec's cultural and linguistic specificity, resulted in Canada assuming a more overtly plurinational political and constitutional character over time (*Canada in the World*, at 35). In this context, Tierney argues, "the consent that underpins the legitimacy of the federal polity is the consent of its constituent territories as well as that of the individual citizens of the state" (*Canada in the World*, at 47). He then concludes that the strong attachment to the principle of provincial equality takes seriously the issue of provincial recognition but may not take full account of Canada's biculturalism (*Canada in the World*, at 48).

Patrick Macklem moves the analysis from federalism to "a less familiar commitment to legal pluralism," that is, the constitutional relationship between Indigenous Peoples and the Canadian state (*Canada in the World*, Ch. 4). He notes that "the ethos of constitutional pluralism immanent in early encounters between Indigenous and colonial peoples failed to take root." Instead, a "monistic account" of the constitutional order prevailed and the Crown negotiated treaties with Indigenous Peoples "for reasons antithetical to pluralism's promise" (*Canada in the World*, at 84, 86). After section 35 of the *Constitution Act*, 1982, which recognizes and affirms "the existing aboriginal and treaty rights of the aboriginal peoples," treaty rights assumed a new constitutional status and "recover[ed] the promise of constitutional pluralism" (*Canada in the World*, at 90). Macklem refers to judicial decisions that "occasionally hint at an ethos of constitutional pluralism" when they refer to reconciling "pre-existing Aboriginal sovereignty with assumed Crown sovereignty."[12] However, he continues, these statements do not render the relations between Indigenous Peoples and Canada constitutionally plural. For this to happen, Indigenous governments would need to be constitutionally recognized as "sovereign within their spheres of authority, capable of exercising exclusive and concurrent lawmaking powers formally equivalent to their federal and provincial counterparts" (*Canada in the World*, at 95-96).

[11] See, e.g., *Oxford Handbook*, at 3 ("at certain points in Canadian history, governments were intent not on mutual accommodation but on assimilation") and *Canada in the World*, at 24 ("despite the accolades Canada has earned abroad for the theory and doctrine of its constitutional law, the lived experience of many of the peoples of Canada remains one of misgiving, disenchantment and also of anger for a past that remains unreconciled with the present").

[12] *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, at [20].

The meaning of sovereignty in this process of reconciliation is explored further in Jeremy Webber's chapter on "contending sovereignties" (*Oxford Handbook*, Ch. 13). The focus of Indigenous arguments, Webber suggests, is on a meaning of sovereignty emphasizing the origin of political authority and the concept of self-government. A culturally diverse political community, such as Canada, must develop organizing principles to sustain this plural community. These principles, Webber concludes, "can be plural in their origins, drawing upon different traditions and speaking different normative languages" (*Oxford Handbook*, at 298). John Borrows's rich account of varied examples of Indigenous constitutionalism sheds further light on this constitutional pluralism (*Oxford Handbook*, Ch. 2). This diverse constitutional experience makes Canada a distinctly interesting case. After all, as Borrows puts it, "Canada's constitutional genealogy cannot be recounted without accounting for Indigenous constitutionalism across the land" (*Oxford Handbook*, at 38).

The discussion of federalism and Indigenous constitutionalism reflects a broader question: whose voices are heard in Canada's ongoing constitutional project and how can this process bring in the experience of historically underrepresented groups? The contributions in Part III of the *Oxford Handbook* could be read to respond to this question with respect to Indigenous Peoples. Furthermore, Beverley Baines and Ruth Rubio-Marin address the role of women in the project of constitutional authorship in their chapter on feminist constitutionalism in Canada (*Oxford Handbook*, Ch. 45).

5. Conclusion: Comparative law

This review essay identified key themes that reflect the identity of Canada's constitutional order and represent fruitful areas for comparative engagement. The last area of comparative interest is the role of comparative engagement itself in Canadian constitutional law.

Former Chief Justice Beverley McLachlin provides an apt summary: "Canadian lawyers are comparative lawyers; Canadian judges are comparative judges. It's not a matter of debate; it's simply the way we are, the way our history has made us" (*Canada in the World*, at 30). As was noted earlier, the influence between the Canadian and foreign legal systems is a two-way street or, to use Ran Hirschl's description, Canada is both "importer and exporter of constitutional thought" (*Canada in the World*, Ch. 13). The influence of different legal traditions was embedded in the Canadian system from its beginnings and has remained important until today. As Peter Oliver, Patrick Macklem, and Nathalie Des Rosiers outline in

their introduction to the *Oxford Handbook*, the Canadian legal system brought together two cultures: one predominantly French-speaking and governed by civil law; the other predominantly English-speaking and governed by common law (*Oxford Handbook*, at 3). The preamble of the *Constitution Act*, 1867 refers to "a Constitution similar in Principle to that of the United Kingdom." At the same time, the adoption of a federal constitutional architecture, the shared common law tradition, more recently the adoption of a bill of rights in the form of the *Canadian Charter of Rights and Freedoms*, and geographic proximity, among other factors, also made Canada's neighbor to the south an obvious comparator. Indeed, an empirical study found that the Canadian Supreme Court cited 1,944 foreign precedents in its 1,004 constitutional cases during the first 32 years of the *Charter* (1982-2013) – 1,183 of these citations were to US judgments (61%) and 516 to UK judgments (27%).[13] Furthermore, the richness of Canada's normative pluralism is further enhanced by the diversity of its Indigenous legal systems, even though, as discussed earlier, the "ethos of constitutional pluralism" has not (yet) taken root with respect to Indigenous law.

Conversely, as Ran Hirschl demonstrates, constitutional innovation has been one of Canada's main intellectual exports (*Canada in the World*, at 305). Richard Albert highlights similarly that the Canadian constitution has influenced the design of the South African Bill of Rights, the Israeli Basic Laws, the New Zealand Bill of Rights, and the Hong Kong Bill of Rights (*Canada in the World*, at 2). Different chapters in the volume trace this path of influence. For instance, Heinz Klug uses the example of the limitations clause (section 1 of the *Charter*) to document how Canadian constitutional experience was drawn upon in the process of drafting and interpreting the South African constitution (*Canada in the World*, Ch. 17). Klug adds that Canada's contribution is most clearly observed in the jurisprudence of the South African Constitutional Court. His analysis shows that Canadian law has been "the most cited source of foreign law in the Constitutional Court between 1995 and 2015, if even only slightly ahead of the United States" (*Canada in the World*, at 406-10). Moving to an example of an international court, Lech Garlicki notes that the European Court of Human Rights (ECtHR) cites the Supreme Court of Canada more regularly than any other foreign court, including the US Supreme Court and the Inter-American Court of Human Rights. He explains that ECtHR references to Canadian precedents are mostly focused on cases involving the UK because UK courts have cited Canadian cases at the earlier stage of domestic proceedings. Garlicki

[13] Gianluca Gentili, *Enhancing Constitutional Self-Understanding through Comparative Law: An Empirical Study of the Use of Foreign Case Law by the Supreme Court of Canada (1982–2013), in* COURTS AND COMPARATIVE LAW 378, 395 (Mads Andenas & Duncan Fairgrieve, eds., 2015).

discusses two examples in which the ECtHR engaged with the reasoning of the Canadian Supreme Court in cases involving assisted suicide and prisoners' voting rights (*Canada in the World*, Ch. 15). Finally, it should be noted that, while most chapters illustrate the influence of Canadian constitutional law in other jurisdictions, Wen-Chen Chang offers a cautionary note. Chang points to the limits of the Canadian Supreme Court's influence in East Asia, drawing on the examples of a common law court, Hong Kong's Court of Final Appeal, and a civil law court, Taiwan's Constitutional Court (*Canada in the World*, Ch. 16).

As the two volumes reviewed here mark the celebration of Canada's sesquicentennial, it is probably fitting to conclude with a note on Canada's ongoing constitutional project. In this regard, Richard Albert stresses the endurance and legitimacy of the Canadian constitution, which he attributes to the constitution's "continued contestability" rather than a single founding moment. He adds that "the Canadian commitment to the living constitution entails the political reality that the Constitution is both an unfinished and an unfinishable project of self-government. . . . This unsteady state invites both challenges and opportunities" (*Canada in the World*, at 8). Other contributions echo the related idea of "agonistic constitutionalism" (*Oxford Handbook*, at 290-91 and 1024-25), namely, a version of constitutionalism that recognizes the existence of fundamental political disagreement and diversity and views constitutional development "as something that must proceed day by day, not through the fiat of a closed set of founding fathers or their privileged successors."[14]

Comparative public law scholars can contribute insights to these contested domestic debates building on a long tradition of comparative engagement within Canada. Conversely, Canada has and will continue to serve as a source of constitutional inspiration for comparative public lawyers, especially, though not exclusively, in common law systems. For both of these comparative enterprises and for scholars both inside and outside Canada, the *Oxford Handbook of the Canadian Constitution* and *Canada in the World* will prove to be indispensable resources.

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[14] JEREMY WEBBER, THE CONSTITUTION OF CANADA: A CONTEXTUAL ANALYSIS 8 (2015).